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Emily B Caudill
REGULATIONS COMPILER

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 1:010. Protests and appeals

5 RELATES TO: KRS 49.220, 49.250, 131.010, 131.030, 131.081, 131.110, 131.180, and  
6 13B.[131.340, 131.345, 131.360, 131.370, 139.760, 139.980(4)]

7 STATUTORY AUTHORITY: KRS [~~Chapter 13A,~~]131.130

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130 authorizes the Kentucky  
9 Department of Revenue to promulgate administrative regulations for the administration and

10 enforcement of all tax laws of this state. This administrative regulation provides guidance  
11 regarding a taxpayer's [~~summarizes significant portions of the statutes dealing with taxpayer~~]  
12 protest and appeal rights and outlines procedures to facilitate the filing, processing and disposition  
13 of a protest or appeal. [~~such protests and appeals.~~]

14 Section 1. Definitions. As used in this administrative regulation, "Notice" means a letter,  
15 memorandum, or other document from the department notifying the taxpayer that tax has been  
16 assessed and is due.

17 Section 2. Protest - Assessments. (1) Taxpayers will be notified of additional tax assessments  
18 by mail. Payment including interest from the original due date, in the absence of protest, must be  
19 made within forty-five (45) days from the date of the notice informing the taxpayer that tax is  
20 owed.

(2) A written protest may be filed by the taxpayer, or other persons representing the taxpayer, against additional assessments. The department may require the taxpayer to furnish a "Declaration of Representative," Form 20A100 if a representative is serving on behalf of the taxpayer. The protest and supporting statements shall be filed with the Revenue Cabinet within forty-five (45) days from the date of notice.

(3) A taxpayer or taxpayer representative may submit a written protest and supporting statements to the department by one (1) of the following methods:

(a) Hand delivery to the department at 501 High Street, Frankfort, KY 40601, or a department Taxpayer Service Center location as listed on the department's website;

(b) By the United States postal service or express mail service to the address listed in the notice;  
or

(c) Electronically to an email address, if provided, listed in the assessment or notice.

(4) When determining if the protest was timely filed, the department shall record the submission as:

(a) The date stamped as received by the department, if hand delivered;

(b) The postmark date from the United States post office, if the postal service is used, but excluding the date from a postage meter;

(c) The delivery confirmation date when received by the department, if an express mail service is used; or

(d) The electronic date and time received, if electronically delivered. If the protest is submitted to the department electronically, the taxpayer shall also mail a copy of the protest and supporting statements to the department at the address listed in the notice.

(5) The department shall acknowledge receipt of the taxpayer's protest in writing within ninety

1 (90) calendar days from the date received by the department.

2 (6) In the absence of a protest, payment of the tax assessed in the notice, including any fees,  
3 shall be due on or before the due date listed in the notice.

4 (7) Scheduling options for a conference shall be communicated to the taxpayer by the  
5 department within forty-five (45) days of the taxpayer's written request for a conference. Audio  
6 recordings of the conference are permitted in accordance with KRS 131.081.

7 Section 3. Protest - Refund Denials. (1) The department shall send the taxpayer a notice by  
8 mail of any denial or partial denial of any refund applied for, including a refund claimed upon any  
9 return.

10 (2) The department shall include with each notice of the denial:

11 (a) A clear and concise explanation of the reason for the denial by the department;

12 (b) References to the statutes and administrative regulations that are the basis for the denial;  
13 and

14 (c) The date by which the taxpayer must protest the denial.

15 (3) A If the taxpayer disagrees with the disallowance of any refund, the taxpayer may file a  
16 written protest and supporting statements with the department by the methods set forth in Section  
17 2 of this administrative regulation.

18 (4) If the taxpayer or taxpayer representative has submitted all supporting statements and  
19 documentation requested by the department but has not received a determination regarding the  
20 refund request from the department within 180 calendar days from the date the request was  
21 submitted, the taxpayer may file a protest on the claim as if the refund has been denied by the  
22 department.

1 Section 4. Protest – Transfer (1) Unless the assessment results from an audit performed by the  
2 Office of Field Operations, the department shall attempt to resolve the protest within the taxing  
3 area from which the assessment was issued.

4 (2) If the protest cannot be resolved at the assessment level, the taxing area shall transfer the  
5 protest to the Division of Protest Resolution.

6 (3) A taxpayer may request in writing that a protest be transferred to the Division of Protest  
7 Resolution by the methods outlined in Section (2) of this administrative regulation for  
8 consideration by the department.

9 (4) The department shall complete the transfer within forty-five (45) days of receipt of the  
10 taxpayer's written request to transfer the protest to the Division of Protest Resolution.

11 (5) The Division of Protest Resolution shall acknowledge receipt of the protest in writing to  
12 the taxpayer within forty-five (45) days of the department transferring the protest. The  
13 acknowledgement by the Division of Protest Resolution shall contain:

14 (a) The name and contact information of the department employee assigned to the taxpayer's  
15 protest; and

16 (b) The name and contact information of the employee's direct supervisor.

17 Section 5. Final Ruling. (1) The department shall issue a final ruling on all unresolved  
18 protests after transfer to the Division of Protest Resolution.

19 (2) The taxpayer may request in writing a final ruling at any time after the filing of a timely  
20 protest and supporting statements.

21 (3) If requested in writing, the department shall issue a final ruling to the taxpayer within thirty  
22 (30) days from the date the request is received by the department by one of the methods described  
23 in Section 2 of this administrative regulation.

1     Section 6. Failure by the department to meet any of the deadlines imposed by this administrative  
2     regulation:

3     (1) May justify a waiver of penalties; and

4     (2) Shall not be interpreted to allow a reduction in any tax, interest, or fees assessed by the  
5     department.

103 KAR 1:010

APPROVED BY AGENCY:

*Daniel Bork*  
DANIEL P. BORK, COMMISSIONER  
Department of Revenue  
Finance and Administration Cabinet

*December 12, 2017*  
Date

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on January 24, 2018, at 1:00pm in Room 11A, State Office Building, Frankfort KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2018. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Finance and Administration Cabinet, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40602, (502) 564-9526 (telephone), (502) 564-3875 (fax), [Lisa.Swiger@ky.gov](mailto:Lisa.Swiger@ky.gov)(email).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 1:010

Contact Person: Lisa Swiger

Phone Number: (502) 564-9526

Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation updates regulatory language to conform to statutory revisions and provide the most accurate and up to date information on filing a protest or appeal with the Department of Revenue.

(b) The necessity of this administrative regulation: In March of 2017 the Kentucky General Assembly passed HB 453 creating the Kentucky Claims Commission, and combining the functions of the Kentucky Board of Claims, Kentucky Board of Tax Appeals and the Crime Victims Compensation Board. This administrative regulation is necessary to remove outdated information and references to the Kentucky Board of Tax Appeals in 103 KAR 1:010, and make other changes needed to conform to the provisions of Kentucky Acts Chapter 74 (HB 453).

(c) How this administrative regulation conforms to the content of the authorizing statutes: It updates outdated references and language the Kentucky Board of Tax Appeals to conform.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: It will provide the most up-to-date guidance for all parties who wish to file a protest with the Department of Revenue against tax assessed by the department, or a refund reduction issued by the department.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment describes multiple methods for filing a timely protest with the department, sets forth new time frames and deadlines for notifications by the department, and removes all references to the Kentucky Board of Tax Appeals.

(b) The necessity of the amendment to this administrative regulation: To conform to recent statutory revisions made in HB 453 during the 2017 Regular Session.

(c) How the amendment conforms to the content of the authorizing statutes: Updates regulatory language to comply with statutory guidance.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will provide up-to-date information to taxpayers for the most efficient and effective administration of the law.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will impact any individual, business or organization wishing to file a protest or appeal against tax owed to the Commonwealth of Kentucky, or a refund reduction issued by the Department of Revenue.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by

either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None, unless they wish to file a protest or appeal, in which case they will follow the parameters set forth herein.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional costs to impacted entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Taxpayers will be able to file a protest of tax assessed by the Department of Revenue in a timely fashion, including electronically, and will be afforded additional administrative processes to ensure that their protests are handled fairly and efficiently by department personnel.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional costs are anticipated. Current staff and department resources will be utilized to implement the provisions of this amendment.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The implementation and enforcement of this administrative regulation will be done using existing department funding and personnel.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No. Only current department budgeted funding will be used to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees were created or increased by this amendment.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied as the provisions of this administrative regulation will apply equally to all applicants for a protest or appeal with the Department of Revenue.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 1:010

Contact Person: Lisa Swiger

Phone Number: (502) 564-9526

Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 131.130.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There is no expected increase or decrease in revenues or expenditures for any state or local government agency as a result of this administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None. This amendment only addresses the procedures to be taken for a taxpayer to file a protest of taxes, penalties, interest or fees assessed by the department.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect. Current processes are already in place to administer protests and the resolution of protests.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: